

**MILITARY INSTALLATION DEVELOPMENT AUTHORITY**

**AMENDMENTS**

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Jerry W. Stevenson**

House Sponsor: Val L. Peterson

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**LONG TITLE**

**General Description:**

This bill amends provisions related to the Military Installation Development Authority.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ for purposes of creating a public infrastructure district, clarifies who is considered the owner of military land within a project area by the Military Installation Development Authority (authority);
- ▶ amends provisions relating to ownership of a former rail line adjacent to a project area located at an air force base;
- ▶ enacts provisions immunizing a governmental entity from liability related to the ownership of certain historically contaminated property; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides a special effective date.

**Utah Code Sections Affected:**

AMENDS:

**17D-4-201**, as renumbered and amended by Laws of Utah 2021, Chapter 314

29 [63H-1-208](#), as enacted by Laws of Utah 2021, Chapter 414

30 ENACTS:

31 [63H-1-209](#), Utah Code Annotated 1953



33 *Be it enacted by the Legislature of the state of Utah:*

34 Section 1. Section **17D-4-201** is amended to read:

35 **17D-4-201. Creation -- Annexation or withdrawal of property.**

36 (1) (a) Except as provided in Subsection (1)(b), Subsection (2), and in addition to the  
37 provisions regarding creation of a local district in Title 17B, Chapter 1, Provisions Applicable  
38 to All Local Districts, a public infrastructure district may not be created unless:

39 (i) if there are any registered voters within the applicable area, a petition is filed with  
40 the creating entity that contains the signatures of 100% of registered voters within the  
41 applicable area approving the creation of the public infrastructure district; and

42 (ii) a petition is filed with the creating entity that contains the signatures of 100% of  
43 surface property owners within the applicable area consenting to the creation of the public  
44 infrastructure district.

45 (b) (i) As used in this Subsection (1)(b):

46 (A) "Military land" means the same as that term is defined in Section [63H-1-102](#).

47 (B) "Project area" means the same as that term is defined in Section [63H-1-102](#).

48 (ii) Notwithstanding Title 17B, Chapter 1, Part 2, Creation of a Local District, and any  
49 other provision of this chapter, the development authority may adopt a resolution creating a  
50 public infrastructure district as a subsidiary of the development authority if all owners of  
51 surface property proposed to be included within the public infrastructure district consent in  
52 writing to the creation of the public infrastructure district.

53 (iii) For purposes of Subsection (1)(b)(ii), if the surface property proposed to be  
54 included within the public infrastructure district includes military land that is within a project  
55 area, the owner of the military land within the project area is the lessee of the military land.

56 (2) (a) The following do not apply to the creation of a public infrastructure district:

57 (i) Section 17B-1-203;

58 (ii) Section 17B-1-204;

59 (iii) Subsection 17B-1-208(2);

60 (iv) Section 17B-1-212; or

61 (v) Section 17B-1-214.

62 (b) The protest period described in Section 17B-1-213 may be waived in whole or in  
63 part with the consent of:

64 (i) 100% of registered voters within the applicable area approving the creation of the  
65 public infrastructure district; and

66 (ii) 100% of the surface property owners within the applicable area approving the  
67 creation of the public infrastructure district.

68 (c) If the protest period is waived under Subsection (2)(b), a resolution approving the  
69 creation of the public infrastructure district may be adopted in accordance with Subsection  
70 17B-1-213(5).

71 (d) A petition meeting the requirements of Subsection (1):

72 (i) may be certified under Section 17B-1-209; and

73 (ii) shall be filed with the lieutenant governor in accordance with Subsection  
74 17B-1-215(1)(b)(iii).

75 (3) (a) Notwithstanding Title 17B, Chapter 1, Part 4, Annexation, an area outside of the  
76 boundaries of a public infrastructure district may be annexed into the public infrastructure  
77 district if the following requirements are met:

78 (i) (A) adoption of resolutions of the board and the creating entity, each approving of  
79 the annexation; or

80 (B) adoption of a resolution of the board to annex the area, provided that the governing  
81 document or creation resolution for the public infrastructure district authorizes the board to  
82 annex an area outside of the boundaries of the public infrastructure district without future

83 consent of the creating entity;

84 (ii) if there are any registered voters within the area proposed to be annexed, a petition  
85 is filed with the creating entity that contains the signatures of 100% of registered voters within  
86 the area, demonstrating that the registered voters approve of the annexation into the public  
87 infrastructure district; and

88 (iii) a petition is filed with the creating entity that contains the signatures of 100% of  
89 surface property owners within the area proposed to be annexed, demonstrating the surface  
90 property owners' consent to the annexation into the public infrastructure district.

91 (b) Within 30 days of meeting the requirements of Subsection (3)(a), the board shall  
92 file with the lieutenant governor:

93 (i) a copy of a notice of impending boundary action, as defined in Section 67-1a-6.5,  
94 that meets the requirements of Subsection 67-1a-6.5(3); and

95 (ii) a copy of an approved final local entity plat, as defined in Section 67-1a-6.5.

96 (4) (a) Notwithstanding Title 17B, Chapter 1, Part 5, Withdrawal, property may be  
97 withdrawn from a public infrastructure district if the following requirements are met:

98 (i) (A) adoption of resolutions of the board and the creating entity, each approving of  
99 the withdrawal; or

100 (B) adoption of a resolution of the board to withdraw the property, provided that the  
101 governing document or creation resolution for the public infrastructure district authorizes the  
102 board to withdraw property from the public infrastructure district without further consent from  
103 the creating entity;

104 (ii) if there are any registered voters within the area proposed to be withdrawn, a  
105 petition is filed with the creating entity that contains the signatures of 100% of registered voters  
106 within the area, demonstrating that the registered voters approve of the withdrawal from the  
107 public infrastructure district; and

108 (iii) a petition is filed with the creating entity that contains the signatures of 100% of  
109 surface property owners within the area proposed to be withdrawn, demonstrating that the

110 surface property owners consent to the withdrawal from the public infrastructure district.

111 (b) If any bonds that the public infrastructure district issues are allocable to the area to  
112 be withdrawn remain unpaid at the time of the proposed withdrawal, the property remains  
113 subject to any taxes, fees, or assessments that the public infrastructure district imposes until the  
114 bonds or any associated refunding bonds are paid.

115 (c) Upon meeting the requirements of Subsections (4)(a) and (b), the board shall  
116 comply with the requirements of Section 17B-1-512.

117 (5) A creating entity may impose limitations on the powers of a public infrastructure  
118 district through the governing document.

119 (6) (a) A public infrastructure district is separate and distinct from the creating entity.

120 (b) (i) Except as provided in Subsection (6)(b)(ii), any financial burden of a public  
121 infrastructure district:

122 (A) is borne solely by the public infrastructure district; and

123 (B) is not borne by the creating entity, by the state, or by any municipality, county, or  
124 other political subdivision.

125 (ii) Notwithstanding Subsection (6)(b)(i) and Section 17B-1-216, the governing  
126 document may require:

127 (A) the district applicant to bear the initial costs of the public infrastructure district;

128 and

129 (B) the public infrastructure district to reimburse the district applicant for the initial  
130 costs the creating entity bears.

131 (c) Any liability, judgment, or claim against a public infrastructure district:

132 (i) is the sole responsibility of the public infrastructure district; and

133 (ii) does not constitute a liability, judgment, or claim against the creating entity, the  
134 state, or any municipality, county, or other political subdivision.

135 (d) (i) (A) The public infrastructure district solely bears the responsibility of any  
136 collection, enforcement, or foreclosure proceeding with regard to any tax, fee, or assessment

137 the public infrastructure district imposes.

138 (B) The creating entity does not bear the responsibility described in Subsection  
139 (6)(d)(i)(A).

140 (ii) A public infrastructure district, and not the creating entity, shall undertake the  
141 enforcement responsibility described in, as applicable, Subsection (6)(d)(i) in accordance with  
142 Title 59, Chapter 2, Property Tax Act, or Title 11, Chapter 42, Assessment Area Act.

143 (7) A creating entity may establish criteria in determining whether to approve or  
144 disapprove of the creation of a public infrastructure district, including:

- 145 (a) historical performance of the district applicant;
- 146 (b) compliance with the creating entity's master plan;
- 147 (c) credit worthiness of the district applicant;
- 148 (d) plan of finance of the public infrastructure district; and
- 149 (e) proposed development within the public infrastructure district.

150 (8) (a) The creation of a public infrastructure district is subject to the sole discretion of  
151 the creating entity responsible for approving or rejecting the creation of the public  
152 infrastructure district.

153 (b) The proposed creating entity bears no liability for rejecting the proposed creation of  
154 a public infrastructure district.

155 Section 2. Section **63H-1-208** is amended to read:

156 **63H-1-208. Former rail line.**

157 (1) A former rail line automatically becomes included within a project area located at  
158 an air force base if:

- 159 (a) the authority acquires title to the former rail line as provided in Subsection (2); and
- 160 (b) a portion of the former rail line is adjacent to the project area.

161 (2) Notwithstanding Section 72-5-117, the Department of Transportation may transfer  
162 to the authority, at no cost to the authority, title to that portion of a former rail line adjacent to a  
163 project area located at an air force base that the Department of Transportation does not need for

164 construction of a freeway interchange.

165 [~~2~~] (3) The authority may:

166 (a) develop the former rail line; or

167 (b) transfer title of all or part of the former rail line, at no cost, to another governmental  
168 entity or nonprofit entity who agrees to receive the title.

169 (4) A governmental entity or nonprofit entity that agrees to receive title to all or part of  
170 a former rail line under Subsection (3)(b) assumes responsibility for the maintenance of and  
171 any construction that remains to be completed on the former rail line.

172 Section 3. Section **63H-1-209** is enacted to read:

173 **63H-1-209. Immunity from contaminated property claims.**

174 (1) As used in this section:

175 (a) "Agency" means the same as that term is defined in Section [57-25-102](#).

176 (b) "Claim" means an action, suit, claim, demand, allegation, or cause of action,  
177 whether grounded in law or equity, made in a court of competent jurisdiction, mediation,  
178 arbitration, before a regulatory body, or in another dispute resolution forum.

179 (c) "Contaminated property" means real property in a project area that is:

180 (i) affected by historical contamination; and

181 (ii) owned by a governmental entity.

182 (d) "Environmental covenant" means the same as that term is defined in Section  
183 [57-25-102](#).

184 (e) "Governmental entity" means the same as that term is defined in Section  
185 [63G-7-102](#).

186 (f) "Hazardous materials" means the same as that term is defined in Section [19-6-302](#).

187 (g) "Hazardous substances" means the same as that term is defined in Section  
188 [19-6-302](#).

189 (h) "Historical contamination" means the placement, disposal, or release of hazardous  
190 materials or hazardous substances onto, into, under, or in a way that affects real property, and

191 which placement, disposal, or release of hazardous materials or hazardous substances occurred  
192 prior to ownership of the real property by a governmental entity.

193 (i) "Ownership," "own," "owned," "owns," or "acquires" means to have an ownership  
194 or other established interest in real property, including holding title to, leasing, operating on, or  
195 maintaining real property.

196 (2) In addition to the liability protection provided by Subsections 63G-7-201(4)(l) and  
197 63G-7-201(4)(s)(iii) and the other provisions of Title 63G, Chapter 7, Governmental Immunity  
198 Act of Utah, the protections of Subsection (3) apply to a governmental entity that owns or  
199 approves the use of contaminated property.

200 (3) (a) Ownership of contaminated property by a governmental entity, or a  
201 governmental entity's approval of the use of contaminated property does not subject a  
202 governmental entity, its agents, or its officers or employees to any liability for or related to a  
203 claim arising from, proximately caused by, or related to historical contamination.

204 (b) No governmental entity waives immunity from suit or liability by this section.

205 (c) A claim made against a governmental entity, its agents, or its officers or employees  
206 in violation of this section shall subject the claimant to the payment of double the attorney fees  
207 and costs incurred by the governmental entity related to the claim.

208 (d) This Subsection (3) does not limit or alter:

209 (i) claims against or the liability of the party that placed, disposed of, or released the  
210 hazardous materials or hazardous substances onto, into, under, or in a way that affects  
211 contaminated property; or

212 (ii) a workers' compensation claim made by an employee of an entity that works on  
213 contaminated property or conducts work related to contaminated property.

214 (4) If a governmental entity that owns contaminated property develops the  
215 contaminated property for public or governmental purposes, including recreation, government  
216 offices, parking, or related uses, then Subsection (3) extends to that governmental entity,  
217 regardless of whether the governmental entity had a role in approving use of the contaminated

218 property, if the governmental entity:

219 (a) obtains a certificate of completion from the Utah Department of Environmental  
220 Quality following participation in the voluntary cleanup program, as set forth in Section  
221 19-8-111; or

222 (b) complies with the terms of an environmental covenant signed by an agency and  
223 properly recorded in the county records against the property.

224 **Section 4. Effective date.**

225 If approved by two-thirds of all the members elected to each house, this bill takes effect  
226 upon approval by the governor, or the day following the constitutional time limit of Utah  
227 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,  
228 the date of veto override.